

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

KEITH L. NASH.

Plaintiff,

V.

DOUG WADDINGTON, *et al.*,

Defendants.

Case No. CO4-5161 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION GRANTING
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT, DENYING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT,
AND DISMISSING PLAINTIFF'S
COMPLAINT WITH PREJUDICE

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge that Plaintiff's complaint be dismissed with prejudice. On cross-motions for summary judgment on Plaintiff's claim of violations of his right to access the courts, the Magistrate Judge recommends that Defendants' motion be granted and Plaintiff's denied. As detailed by the Magistrate Judge, Plaintiff has failed to show an actual injury. Any delay in providing Plaintiff access to his legal materials was reasonably related to legitimate penological interests.

The Plaintiff has filed Objection to the Report and Recommendation contending that the Magistrate Judge failed to consider Plaintiff's 'reply brief' in support of his cross motion for summary judgment and failed to consider whether a proposed amended complaint withstood summary judgment. Plaintiff's argument is unpersuasive. Even considering Plaintiff's additional pleadings, he has not shown proof of a deadline (45 days) that would have entitled him with access

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1 to legal materials during his placement in maximum security. Nor has Plaintiff shown proof that his
2 collateral attack was not frivolous.

3 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
4 Strombom, Plaintiff's Reply and Plaintiff's Objections to the Report and Recommendation, and the
5 remaining record, does hereby find and ORDER:

- 6 (1) The Court adopts the Report and Recommendation;
- 7 (2) Defendant Tiapula's Motion for Summary Judgment [Dkt. # 235] is **GRANTED**;
- 8 (3) Plaintiff's Cross-motion for Summary Judgment [Dkt. # 247] is **DENIED**;
- 9 (4) Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**; and
- 10 (5) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
and to the Hon. Karen L. Strombom.

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12 DATED this 3rd day of January, 2007.

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16 FRANKLIN D. BURGESS
17 UNITED STATES DISTRICT JUDGE
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